

REMARKS

Claims 7–11 are pending as original. Claims 1–6 are withdrawn.

Claims 7–11 are rejected for non-statutory obviousness-type double patenting based on claim 19 of U.S. Pat. No. 6,663,889 to Maerz. The Applicant respectfully disagrees with the Examiner and submits that the present invention as claimed is patentably distinct from claim 19 of the Maerz ‘889 patent. The Examiner asserts that a method for treating inflammation in the pharynx with ambroxol is not patentably distinct from a method of administering ambroxol with a suckable tablet because the method claimed in the current application is “obviously achieved upon the same method [step] of administering the same active agent to the same subject by the patent.” However, as described in this application, at the time of the present invention, *in vitro* and *in vivo* studies of the anti-inflammatory effect of ambroxol were open to interpretation and contradictory. Thus, the Applicant respectfully submits that one skilled in the art at the time of the invention would not conclude that ambroxol could be used for treating inflammation in the pharynx. Therefore, the Applicant respectfully requests that the non-statutory double patenting rejection of claim 7–11 based on claim 19 of the Maerz ‘889 patent be reconsidered and withdrawn.

Claim 7 has been rejected under 102(b) as being anticipated by Weiser. The Examiner asserts that Weiser teaches ambroxol can be used as an effective treatment of sore throat. The Applicant respectfully disagrees with the Examiner and submits that the present invention as claimed is not anticipated by Weiser. For example, as stated above, at the time of the present invention, the *in vitro* and *in vivo* studies of the anti-inflammatory effect of ambroxol were open to interpretation and contradictory. Thus, in light of the full state-of-the-art, Weiser would not have been understood by one skilled in the art to support the

Examiner's conclusion. In other words, Weiser is not an enabling disclosure of the present invention as claimed. Therefore, the Applicant respectfully requests that the 102(b) rejection of claim 7 based on Weiser be reconsidered and withdrawn.

Claims 7–11 have been rejected under 102(b) as being anticipated by the Maerz WO publication. The Examiner asserts that treating inflammation of the pharynx would be an inherent effect of administering the same active composition to the same subject taught by the Maerz WO publication. The Applicant respectfully disagrees with the Examiner and submits that the present invention as claimed is not inherently anticipated by the Maerz WO publication. Again, as stated above, at the time of the present invention, the *in vitro* and *in vivo* studies of the anti-inflammatory effect of ambroxol were open to interpretation and contradictory. Thus, one skilled in the art at the time of the invention would not necessarily recognize that ambroxol could be used for treating inflammation in the pharynx. Therefore, the Applicant respectfully requests that the 102(b) rejection of claims 7–11 based on the Maerz WO publication be reconsidered and withdrawn.

Claims 7–11 stand rejected under 102(e) as being anticipated by the Maerz '889 patent. For the reasons stated above, the Applicant respectfully submits that the Maerz '889 patent does not inherently anticipate the present invention as claimed. Therefore, the Applicant respectfully requests that the 102(e) rejection of claims 7–11 based on the Maerz '889 patent be reconsidered and withdrawn.

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Respectfully submitted,
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